

Motion to pass.

Sri KADIDAL MANJAPPA.—Sir, I beg to move:

“That the Land Acquisition (Mysore Extension and Amendment) Bill, 1961 as passed by the Legislative Council be passed.”

Mr. DEPUTY SPEAKER.—The question is:

“That the Land Acquisition (Mysore Extension and Amendment) Bill, 1961, as passed by the Legislative Council, be passed.”

The motion was adopted.

MEMBER'S REPRESENTATION

Sri J. B. MALLARADHYA.—In regard to half-an-hour discussions, I suggest that the Speaker do take into consideration the question of including half-an-hour discussion within the time allotted. If we take up half-an-hour discussion after six, everybody gets fagged and most of the members go away. In fact, most half-an-hour discussions have not come up. As a preliminary to my talk, I would suggest...

Mr. DEPUTY SPEAKER.—The rules will not permit.

Sri J. B. MALLARADHYA.—That is why I say that action will have to be taken to amend the rules.

Sri K. PUTTASWAMY.—The rule has to be amended; but even without amending the rule, by practice we can commence half-an-hour discussion at 5-30 instead of at 6.

Sri KADIDAL MANJAPPA.—I wish to make an announcement. The Government of Madhya Pradesh has donated one waggon of rice for the flood-striken areas, for the people of Mysore.

Sri V. P. DEENADAYALU NAIDU.—While expressing our thanks to them, do you communicate to them anything by way of expressing our gratitude?

Sri KADIDAL MANJAPPA.—Certainly; we will communicate; will express our gratitude.

HALF-AN-HOUR DISCUSSION ON Q. No. 230 *Re: AGREEMENT FOR TECHNICAL COLLABORATION.*

† **Sri J. B. MALLARADHYA.**—This discussion relates to Starred Question No. 230 regarding the agreement for technical collaboration with the German firm of A.E.G. on behalf of the Government

Factory, Bangalore. I have not much time to go into the fullest details possible; but one thing I must say by way of general observation. This is a most unconscionable agreement that can ever be entered into between a Government and a private party, for the reasons which I will shortly enumerate. I call it a very unconscionable agreement and I consider that it is unprecedented for most unbusiness like transaction entered into on behalf of the Government with any private firm. It has also gained the distinction of showing a very unique sample of favouritism and nepotism; I am sorry to use strong words. I raised this question in the course of debate on the Industries and Supplies Demand. The matter was evaded by the Chief Minister by making a few general observations which have no bearing on the circumstances of the case which I referred to. This is an agreement for collaboration and for advice of contract and for sales distribution entered into between Messrs. A.E.G., Frankfurt, West Germany and the Government Electric Factory, Bangalore. The most funny thing about this is, the Chief Minister on a previous occasion said that this was not an agreement which was entered into by the present Ministry. I do not wish to make any serious comment about it; but I know that it was finalised by the present Ministry. The most peculiar feature about this contract is, whether for technical collaboration or for sales distribution or for adviser contract, no tender was called for. For execution of any contract of major importance or for carrying out work of magnitude or importance, we are in an age when global tenders are called for. Supposing there is an expansion scheme of the Iron and Steel Works, Bhadravathi or an expansion scheme of the Porcelian Factory or any other factory. We call for global tenders so that we may get the benefit to the people of the State, to the industrial expansion of the State. In this case, however, no tender was called for. We were not aware of the special circumstances in which the Government of Mysore in their wisdom eliminated the normal practice of calling for a global tender. As I have already said, the agreement was finalised by the present Ministry. I will give you a few details. I invite the attention of the Minister in charge of this debate to the sales distribution agreement; I invite his attention to article II.

“Dodsal shall have the right to export the products covered by the exclusive selling rights established by this Agreement to the following neighbouring countries, i.e., Burma, Ceylon, Thailand and Indonesia...”

I do not see why the exclusive selling right of these products of the Electric Factory should have been given to one individual who was the sole agent of A.E.G. of West Germany. In addition to getting Two-and-half per cent, this A.E.G. gets Fifteen-and-half per cent commission also. The aggregate of Seventeen-and-half per cent given to this A.E.G. is something which is unknown in the history of giving any kind of commission in the transformer industry. Sir, I lay claim to have dealt with the sale of transformers in the

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Electric Factory and at no time I am aware, more than $2\frac{1}{2}$ per cent. being given by way of commission to the sale of products. This is on record and I am sure, the Hon'ble Minister will bear me out when I say that at no time we have given more than $2\frac{1}{2}$ per cent. To give a $17\frac{1}{2}$ per cent on account of distribution of sale and technical collaboration is something unheard of. Sir, when I discussed this with the Kirloskars, they thought I was making a false statement. I do not think any other agency has secured such an enormous commission.

Then, with regard to export, supposing, for some reason, the goods manufactured in the Electric Factory were not sold. If it becomes necessary for the Mysore Government to export these products, according to the agreement, for every individual case prior consent of the concern has got to be obtained, e., the A. E. G. Sir, supposing there is accumulation of products; why should on every case the prior consent of the A. E. G. be obtained? I cannot understand. Then, Sir, I refer to (b) of clause 2 of article III;

"The Government or the Factory shall use every effort to support Dodsal in all business transactions connected with this Agreement."

Sir, in addition to giving 15 per cent, they say that they will make every effort to support Dodsal in all business transactions. Then, the next is very curious.

"Dodsal shall maintain effective publicity measures for promoting easy sale of the products. The Government shall participate to the extent of one half in the expenses thereby incurred. The total publicity expenditure shall be mutually agreed upon from time to time."

Sir, I want to know whether this kind of sharing the cost of advertisement is given by anybody. I want to know whether in any public sector either sponsored by the State Government or by Government of India, this kind of sharing the publicity expenditure is there. What is more funny is that the total publicity expenditure is shared. Supposing, the man takes into his head to spend one lakh of rupees; have you made any restriction to say, 'this is all we can pay'?

Coming to the question of production, I invite the attention of the House to (e). Sir, these selling agents are the people to determine the production programmes so far as Electric Factory is concerned. I do not know what business the Government had to enter into this unfair agreement. It is said:

"Dodsal hereby agree to sell atleast 50 per cent in the first year and 60 percent in the following years, of the factory's annual output of the products. The extent of the annual output shall be fixed as between Dodsal and the Factory not

later than six months before the beginning of the financial year concerned."

Sir, I want to know how the sales agent agrees only to sell 50 per cent in the first year and 60 per cent in the following years. He has been given the option of the total production of the factory. This is something fantastic. I do not know what exactly this means. Then, Sir, you will please see 3 (b) in regard to conditions of agreement, price and terms of payment.

"The factory shall fix the prices payable by the consumer in collaboration with Dodsal and allow to Dodsal the following discounts provided also the said discounts will apply as long as the average yearly profits of the factory do not fall below 15 per cent....." etc.

Sir, the most interesting point is, the selling agents have got the exclusive right to buy at reduced rates for their own accumulation of stocks. Then, I invite attention to cancellation of agreement on page three of the Sales Distribution Agreement. It says:

"This right of termination shall not be valid, if the non-fulfilment of the obligation to take over the agreed quantum of products is due to the poor quality of the products and or to non-competitive prices".

Sir, I want to ask the Hon'ble Minister whether in the Law Department or in the Finance Department or in the Secretariat concerned with the Industries and Commerce Department, anybody devoted even the smallest attention to this section. If it is due to poor quality of products and non-competitive prices, the selling agency has the right of termination. Who is responsible for poor quality? It is the A.E.G. that is responsible. If the poor quality is due to themselves, the agency says that it does not sell and it has the right to terminate the agreement without paying any compensation. The A.E.G. agree to collaborate technically subject to the condition that their own selling agency will have the privilege of selling the entire production. But, there is 'no responsibility' for standard quality. If the prices are non-competitive, how can you give them 25 per cent on the sales as indicated in 3 (b) (i) on page 3?

Then, coming to technical collaboration, I invite the attention to page 4 of this Agreement—Article III—C.

"In the event of any claim being made or action brought forward for infringements of patents granted in India in respect of standard components of Products etc., the A. E. G. shall be at liberty, with the assistance of the Government if required, but at the cost and expence of A. E. G. to conduct all negotiations for the settlement....."

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So far as standard components of these products is concerned, what is very significant is in respect of D.

"It is agreed that the Government shall take all adequate steps or measures to prevent the infringements by the factory of patents in respect of 'Products' or 'Modified Products' manufactured by the Factory. Should, however, any difficulty arise in this respect, A. E. G. upon request of the Government will be prepared to give advice. In the event of any claim made or action brought against the Government in respect of infringements of patents relating to Products or Modified Products manufactured by the factory, the Government shall conduct all negotiations for settlement of the dispute or any litigation that may arise there from with the assistance of A. E. G. if required, but at the Government's expense".

(**Mr. SPEAKER** in the Chair)

The patent is what is given by the A.E.G. to the Government of Mysore. We do not know and we are not responsible for standardising products and obtaining patents. The patent belongs to them. They have given us the privilege of using the patents and manufacturing products according to specifications. But when anything goes wrong supposing X says that the Government. Electric Factory infringes the patents, they say: "it is not our business to bear all the expenses." Is that correct ? We are not responsible for the patent. Under the agreement, they sell the patent rights to us. If any thing goes wrong, it is they who should be held responsible. This agreement does not cast any responsibility on the A.E.G for what they do, but they are asking the Government to bear the expenses of infringement that is some thing unheard of !

The next point that I refer to is this.—

Article VIII—Compensation C:

"If the Factory should within two (2) years after the effective date of the Agreement not have arrived at a yearly turnover subject to a total royalty of Rs. 50,000 (Rupees fifty thousand) although A.E.G has duly performed its obligations under Article V then nevertheless this fee of Rs. 50,000 (Rupees fifty thousand) will become due as a minimum. This amount will however, take into account the royalties accumulated during the respective year."

If the output in the Electric Factory will not be sufficient to give, even if the Factory does not produce goods up to that magnitude Rs. 50,000 becomes an inevitable payment to the A.E.G. To ensure, quality production and quantitative production, they do not take any

responsibility at all. And then, so far as reserves are concerned, under article 1X, it is said.

"Except in case of wilful default or gross negligence A.E.G. will assume no responsibility for damages or losses arising out of technical data, information or advice given to the factory in good faith, but A.E.G. will, when necessary rectify such technical data or information."

The A.E.G. provides technical data. Here is a clause which says: except in case of wilful default or gross negligence", on whose part, have to ask. "the A.E.G. will assume no responsibility for damages or losses arising out of technical data." They are the people who give technical data. Supposing something goes on. I use your advice and act upon your advice.

Sri B. VAIKUNTA BALIGA.—That is why, "except in case of wilful default or gross negligence", the other things will not be protected by this agreement

Sri J. B. MALLARADHYA.—Supposing anything goes wrong while acting on their advice, they must be held responsible.

Mr. SPEAKER.—He must remember that this is half-an-hour discussion and half-an-hour is fast running out. The Hon'ble Minister requires sometime to reply.

Sri J. B. MALLARADHYA.—Sir, the Government have agreed to pay such a fabulous sum of money without any corresponding obligation cast on them.

I will summarise Sir. In this agreement for technical collaboration is there anything on record to show that the A.E.G. has given an assurance to maintain the quality of goods and stick to standard specifications ? I want this one answer to be given by the Hon'ble Minister.

The second point is, I say that this is a one-sided agreement and we are going to pay continuously for three years whether the quality of the goods is good or whether the production is bad. They take no responsibility either for quality or for infringement or patent or reduction of total quantity. So far as sales are concerned, everything is to be done by the Government. We have to bear the advertisement expense and we give 17½ per cent. In one word, I may say that in the whole of the Indian Republic, there is no concern whether in the private sector or in the public sector which gives such unusual concessions to any firm and gets in return such poor returns so far as the Government is concerned. I want to know the special circumstances under which this Government entered into such an agreement and how far this agreement has worked in the interest of the Government and whether it is possible even at this stage to revoke this agreement. That is the very essence of the discussion which I want to raise. It is an unconscionable agreement, a one-sided agreement and I really wish to know whether the Law Department and the Technical Departments, the Chief Electrical Engineer or the

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person in charge of the Factory, have no responsibility in this matter. They have allowed this kind of an agreement to be entered into. I think that this is a very unusual thing that could happen in any State.

† Sri B. VAIKUNTA BALIGA.—Sir, in this fairly big subject, my Hon'ble friend has not fully quoted all that is relevant because they are fairly long agreements. He has tried to take out certain sentences and tried to draw generalisations without remembering all the details of the facts. Sir, as is already mentioned, this agreement was the result of what had been done as early as 1956. The agreement had been entered into and the finalisation was to be made because details had to be filled in, the main agreement having been entered into as early as 1956. I do not know whether the then Government had the benefit of advice of my Hon'ble friend or any person who could give similar advice.

Sri J. B. MALLARADHYA.—When you finalised, did you get the advice of anybody?

Sri B. VAIKUNTA BALIGA.—We did get all the good advice and we have done all that is necessary because if we compare the terms as they sent and the terms as finally entered into it will be seen that some of the things which my friend is mentioning are absolute generalisations. One thing that should be borne in mind is the position as it was prevailing then in June 1956, and we are debating this in 1961. This idea of global tender has come into prominence more new than before. It is also to be that global tenders from various contractors for the fulfilment of normal construction work is quite different altogether from collaboration that is sought here for certain specialised or technical work and it is not easy to get in the market. That is one point that should be borne in mind so far as tenders are concerned.

The second consideration is that we secured the right particularly to use the patents licence which the A.E.G. one of the well-known firms, and if it gave collaboration and if it gave all technical help and further gave the use of their licence and patents which nobody else could give. . .

Sri J. B. MALLARADHYA.—How do you say nobody else could give? On what basis? Have you consulted others.

Sri B. VAIKUNTA BALIGA.—Sir, I told you already that it is only after the Government consulted there were several firms which were consulted and it was found that this particular firm were the manufacturers of standard quality products with whom they could get the best terms that could be secured at that time. Sir, to say that nobody was consulted rests upon a promise which is not at all correct.

Sri J. B. MALLARADHYA.—Who are all the people that you consulted?

Sri B. VAIKUNTA BALIGA.—Sir, the names of firms which have already been consulted has been disclosed already in the course of the previous answer that has been given.

Sri J. B. MALLARADHYA.—What are the corresponding rates quoted by each firm?

Sri B. VAIKUNTA BALIGA.—Sir, my friend is now satisfied with that point. He wants corresponding rates and it is a long list.

Sri J. B. MALLARADHYA.—What are the comparative rates offered by competing firms for technical collaboration as well as agency? That is what I want to know.

Sri B. VAIKUNTA BALIGA.—My friend wants to know the rates quoted by several others. If that is a special product, then it has to be considered on its own merits. I do not know whether he will be right in saying that the rate offered is not competitive when the product is a special product. When the product is a quality product and a special product, where is the question of a competitive rate.

Sri J. B. MALLARADHYA.—Is it the contention of the Hon'ble Minister that except A.E.G. there was nobody in the world who could manufacture this product? What is the speciality in transformers? Is it a precision instrument?

Sri B. VAIKUNTA BALIGA.—Now that the Hon'ble Member has raised the question of precision instrument. I do not know whether these products are not precision instruments. I take it that they are precision instruments. Anyway they are purely technical things. Another fact that has to be borne in mind in this connection is that the broad terms of the agreement were agreed upon as far back as 1956 and only the details had to be finalised. I can satisfy my Hon'ble friend as well as the House by showing that the broad terms that were agreed to by us were the minimum rates and that the Government has done everything in the most *bona fide* manner and I do not think that there is anything which my friend has said that what has been done is not *bona fide*.

Sri J. B. MALLARADHYA.—You did nothing except to enter into a broad agreement leaving the details vague. That raises an apprehension that you have not done the correct thing.

Sri B. VAIKUNTA BALIGA.—I have got here the names of the companies with which correspondence was carried on, but for want of time I will not go into those details. But my Hon'ble friend has to remember one fact, which is already mentioned in the answer, that this is not a product which is produced in abundance in the country and that was the reason why there was necessity for collaboration for the manufacture of this product here. Further, it is not that we alone in India have entered into such a collaboration with this firm, but this

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firm has entered into similar collaboration with other countries all over the world. Government has no intention to make any special favour to this company. I can assure the House without any fear of contradiction that Government have done nothing to favour this company. We have entered into these terms in the most *bona fide* manner and I do not think there is much to be said against it.

Then I will refer to two or three other points which he has raised. My friend took objection to the 15 per cent commission granted. I do not know whether my friend has any experience of commerce and how discounts and commissions are given.

Sri J. B. MALLARADHYA.—I also know something of commerce. My question is simple. I want to know whether for transformers manufactured anywhere in the world or in any part of India this high percentage is given.

Sri B. VAIKUNTA BALIGA.—With regard to the discount my friend says that we alone have paid this high percentage. For his information I may mention the existence of the Associated Electrical Industries which pays 25 per cent. I have got a long list of other companies paying a similar discount, but for want of time I am not reading them here, and yet the Hon'ble Member says that the discount that we allow is extraordinarily high. I do not know whether any other collaborator in India has got a more favourable terms than we have got.

It was also mentioned that there was no need for this collaboration and that these products are being manufactured on a large scale all over India. I cannot understand the suggestion of the Hon'ble Member. I would only say that these are special products manufactured by this company in various other parts of the world. These products used to be imported into India. In such a situation, this company offered to collaborate with us on very favourable terms to manufacture these special products here. It is in those circumstances that a broad agreement had been entered into as far back as 1956. These products being special products, the case of other products manufactured in India will not apply to these. Does my Hon'ble friend really dispute that these are not special products? If these are special products, then the terms offered also have got to be special and cannot be compared with the terms of other products. Hence there is really no substance in the argument of the Hon'ble Member.

The next point that he made out was with regard to the agreement with Dodsal. When a manufacturing company enters the market, it is concerned with its reputation. In such a situation when the manufacturing company desires that a particular agency should have the sole right to sell its products in the interest of keeping up the reputation of its products there cannot be any valid objection to it. Further, it will be seen from the terms of the agency agreement that this agency is not entitled to any commission in respect of the sales

effected to the Mysore Government and the companies in which the Mysore Government has got an interest. Thus the requirements of the State Government and its concerns are definitely excluded and the agents are entitled to commission only with regard to sales made to other parties.

Then the Hon'ble Member had something to say about the terms offered to this sales organisation. I would ask him to bear in mind the necessity of a sales organisation and the cost to Government if a separate sales organisation is set up.

Sri J. B. MALLARADHYA.—Do you give such terms to other concerns?

Sri B. VAIKUNTA BALIGA.—Now my Hon'ble friend is changing his argument. He wants to know the terms offered to other concerns. He must remember that here was a sales organisation which was already dealing with these special products. Any new organisation that might be set up might not have all the facilities that the existing organisation had. In those circumstances if the Government utilized the services of that agency for the sale of its products, I should say it is the wisest thing that could have been done. It is easy to fling criticism at us and say that A,B,C could have been asked. Have we got a proper assessment with regard to this industry. Technical knowledge is absolutely necessary. The technicians of DODSAL have a part to play because they are well-equipped. It is not selling any product of common, daily use which could be easily and speedily disposed off in the market. To sell these products special skill and salesmanship is necessary which is available with DODSAL.

With regard to the commission allowed to Dodsal, it is true that we have to meet 10 per cent of his publicity expenses. The benefit of such publicity ensures to both the parties. It is open to the Government to determine the extent of such expenditure. There is nothing unusual in this procedure of sharing the expenditure. Publicity made either by the agent or the principal accrues to the benefit of both parties. It would be a wrong argument to say that the principal has absolutely no interest in the publicity expenditure of the agent. We are as much interested in such publicity because the reputation and our command of the market is linked with publicity. If the principal leaves it entirely to the agent, there is every likelihood of the products not being sold thus injuring the interests of the manufacturer. This is a patent fact and I do not know how the Leader of the Opposition chooses to ignore this point.

Sri J. B. MALLARADHYA.—My question is whether you accept such terms in respect of all industrial undertakings?

Sri B. VAIKUNTA BALIGA.—Sir, the Leader of the Opposition is not going on a straight-line but he is running.

Sri J. B. MALLARADHYA.—In respect of other industries do you share the cost of advertisements? Why this speciality? I have raised specific issues. I am not running but staying.

Sri B. VAIKUNTA BALIGA.—I will attempt to give a satisfactory answer within the short time at my disposal which is not my own doing. I submit that generally speaking it is perfectly normal in companies for the principal and the agent to have publicity expenses shared because both have an interest in the sales. The question is why such a thing is not done in respect of other concerns of Government. The answer is simple. It depends upon the nature of the products that you are required to sell. If it is salt or sugar, it requires no particular skill of a special type to sell it and no special publicity is called for. But in a case of this type, I submit that we did the right thing in sharing advertisement expenses.

Sir, a criticism has been made about giving 25 per cent commission. This 25 per cent would be given only if two contingencies are satisfied. There ought to be a 15 per cent return on the investment on this company. If the sales go beyond that figure and if they are able to sell the products at a higher price, 25 per cent has been promised. It includes facilities, like publicity, maintenance of stock and components, etc. Ultimately the agent would not get more than 5 per cent. He has to maintain and staff his own agents. If the factory had taken upon itself the responsibility of other expenses and components, then 5 per cent would be perfectly proper. If all these factors are kept in mind 25 per cent is not big. There are special dealers who have to be appointed. Where are they to come from? As I said, the company has to get a return not less than 15 per cent returns on its investment. DODSAL would not get 25 per cent unless they sell that much of quantity. My friend is speaking as though a big favour has been conferred upon the agent for the purpose of sale of goods which are of a common type consumer goods which could be easily sold. From our own experience we know that in 1956, there was an accumulation of stock. Now there is a responsibility cast on them to clear them. It is in the interest of the company that this arrangement has been wisely done by Government. There is nothing wrong.

Sri J. B. MALLARADHYA.—You took three years to clear the stock.

Sri B. VAIKUNTA BALIGA.—My friend is talking beside the point. Whenever he finds that his arguments do not stand close scrutiny, he tries to side-track the issue.

In regard to cancellations, on account of poor quality, cancellation had to be done because the prices are non-competitive. If the goods are of poor quality, it would not be worthwhile for anybody to continue selling them. If we cannot manufacture good quality products and satisfy the consumer, it is not worthwhile to continue. It was also said that our prices are non-competitive. How can anybody survive when competitive prices are not given. My friend referred to the question

of enhancement. If he carefully reads and if he does not make a hasty reading...

Sri J. B. MALLARADHYA.—I am not hastily reading. My charge is that you are mis-reading the whole thing purposefully. I will prove it.

Sri B. VAIKUNTA BALIGA.—Sir, my friend has said what he wanted to say. Let me have my say.

Mr. SPEAKER.—I am afraid, the sort of discussion now going on is not in the nature of an half-an-hour debate.

Sri B. VAIKUNTA BALIGA.—The half-an-hour being over, I do not wish to add anything more, except to say that I am unable to agree with the arguments advanced by my friend, the Leader of the Opposition.

Mr. SPEAKER.—Before we adjourn, I would like to say that so far as half-an-hour discussions are concerned, I am afraid, we are not observing the rules. I quite understand the feelings of the questioner when a point is contended but at the same time I would tell the House that it is not fair on the part of the Hon'ble Member to do so. I am willing to reconsider the position if members want opportunities for a full-dressed debate on particular issues, but this is not permissible under the rules.

The House will now rise and meet at 1 P.M. on the 22nd August 1961.

The House adjourned at Forty-Five Minutes past One of the Clock to meet again at One of the Clock on Tuesday, the 22nd August 1961.
